

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Michael F. Disch,)
Plaintiff,) **ORDER**
vs.)
Colby Braun,) Case No. 1:15-cv-087
Defendant.)

Plaintiff initiated this action on June 30, 2015, with the submission of an application to proceed in forma pauperis along with a petition for habeas corpus relief pursuant to 28 U.S.C. § 2241. (Doc. No. 1). He subsequently elected to convert this matter to a civil rights action. (Doc. No. 6). He was an inmate at the North Dakota State Penitentiary at the time. (Doc. Nos. 1-1 and 6-1).

The court proceeded accordingly, granting plaintiff's application to proceed in forma pauperis and order him to pay the civil filing fee in installments as mandated by 28 U.S.C. § 1915(b)(2). (Doc. No. 7).

On August 25, 2015, the court issued an order dismissing this matter without prejudice pursuant to 28 U.S.C. § 1915A. (Doc. No. 11). On December 8, 2015, plaintiff filed a “Motion to Remove the Statutory Filing Fee Imposed in this Case.” (Doc. No. 13). On December 10, 2015, the court denied plaintiff’s motion, reasoning:

First, plaintiff was granted leave to proceed in forma pauperis and assessed the civil filing fee after he elected to convert this matter to a civil rights action. He cannot now avoid the consequence of his election. Second, he has already received the “benefit” of this court’s review of his pleadings.

(Doc. No. 14) (emphasis in the original).

On March 2, 2021, plaintiff filed a “Motion for Compassionate Forgiveness of Court’s Fees.” He advises that he has been diagnosed with terminal cancer, can no longer work, and has limited funds. He requests the court to waive the balance of his civil filing fee in this case.

Although the court sympathizes with plaintiff, it is disinclined to waive the balance of his civil filing fee. First, as the court previously explained, plaintiff’s decision to proceed with this action has consequences. Second, as the court’s order granting plaintiff’s application to proceed in forma pauperis made clear, the installment payments plaintiff is required to make to offset his civil filing fee constitute only a small percentage of any funds deposited into his inmate accounts. Thus, plaintiff will not have to exhaust all of his financial resources in order to make installments payments on his civil filing fee. Third, the balance of plaintiff’s filing fee should pose no obstacle to plaintiff’s ability to obtain medical care or tend to his basic needs. Defendant is presently in the custody of the Federal Bureau of Prisons (“BOP”) at the U.S. Penitentiary in Florence, Colorado.¹ As plaintiff’s custodian, it is incumbent on the BOP to attend to plaintiff’s basic needs regardless of his financial obligation to this court.

Accordingly, plaintiff’s motion (Doc. No. 15) is **DENIED**.

IT IS SO ORDERED.

Dated this 3rd day of March, 2021.

/s/ Clare R. Hochhalter

Clare R. Hochhalter, Magistrate Judge
United States District Court

¹ The envelope in which plaintiff’s motion arrived has a return address of USP- Florence. (Doc. No. 15-1). In addition, information publicly available on the Federal Bureau of Prison’s website indicates that plaintiff is the BOP custody. <<https://www.bop.gov/inmateloc/>>